



INTERIOR BOARD OF INDIAN APPEALS

Estates of Kate Bitner and Rae Bitner

1 IBIA 277 (07/12/1972)

Also published at 79 Interior Decisions 437



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATES OF KATE BITNER AND RAE BITNER

IBIA 72-18

Decided July 12, 1972

Petition for reopening filed by the Bureau of Indian Affairs [Area Director, Billings]
to obtain correction of an error in a probate order issued October 21, 1913.

Denied.

Indian Probate: Reopening: Waiver of Time Limitation

No manifest injustice sufficient to justify exercise of the Secretary's discretion for the correction of an error committed 58 years ago is found where the share of which the heir or devisee was deprived is insubstantial, and the benefits to his successors would be now further reduced by fractionation of the original share.

Indian Probate: Generally

A determination of the heirs of a deceased Indian is controlling only as to the estate of the decedent, and the findings

in each case must be supported by a preponderance of the evidence.

OPINION BY MR. McKEE

Two estates were decided by a combined order determining heirs of each decedent issued by the Assistant Secretary of the Interior on October 21, 1913. The decedent, Kate Bitner, the mother, died December 29, 1911, and Rae Bitner, the child, died at the age of 6 years in 1902. Both had been allotted on the Wind River Reservation in Wyoming. This matter is before the Board upon a petition for reopening filed April 18, 1972, by the Bureau of Indian Affairs acting through the Area Director at Billings, Montana.

From the facts stated and the material furnished, it would appear that Abner Bitner died in September of 1904, leaving plural wives among his surviving heirs: Kate, one of the decedents herein, and Constance, not here involved. He had children by both wives; with Kate he had a daughter, Odelia, who survived him and a son, Rae, who predeceased him, and with Constance he had Matilda, a daughter who survived him. However, in the determinations made in the order of October 21, 1913, Matilda was determined to be the daughter of Kate and therefore a full sister to Rae, whereas Odelia was determined to be the daughter of Constance, and a half sister to Rae. Distribution

was made in accordance with these findings.

It is presumed arguendo that if this case were to be reopened, the evidence supporting the allegations in the petition would be admissible at the rehearing and would sustain the allegations made in the petition overcoming the very substantial evidence before the Assistant Secretary when he made his findings 58 years ago.

The computations furnished by the Bureau indicate that if the determinations had been correctly made as between Matilda and Odelia the distribution of the interests to Matilda as a “half sister” in the 120-acre allotment of Rae Bitner (No. C157) would have been 82/1105, thereof instead of the aggregate interest which she did receive as a “sister [of Rae] and daughter of deceased mother [Kate]” i.e., 38369/225420. Conversely, Odelia should have had the larger interest.

A similar 1/6 difference in the distribution of the 86.28-acre allotment of Kate Bitner (No. C152) would follow. Under the 1913 findings, Odelia received no interest in this allotment. It is noted that the record does not include any immediate prospect or probability of sale to reduce these interests to cash capable of distribution to the owners.

There is no indication that any heir has sold any interest in either allotment. It does appear that Matilda died in 1914 and that Odelia died in 1960. Odelia's heirs are her three children who inherited equally, while Matilda's successors are ten individuals who hold unequal shares.

A petition for reopening was transmitted to this Board by Examiner Hammett in Billings, Montana, by his memorandum of April 13, 1972, in which he withheld any recommendation for reopening on the ground that the interests which were improperly allocated as a result of the error are so small that no manifest injustice could be found.

It is set forth in the Estate of Basil Blackburn, 1 IBIA 261, 79 I.D. 422 (1972).

The Superintendent is charged with the management of the land and with the record keeping as to land ownership of the various allotments on the Wind River Reservation. He is confronted in this case with the possibility of adverse claims being filed, clouding and disturbing titles which have been considered by the Government and by the individuals involved to have been established for substantial periods of time.

When first submitting this case to the Examiner, the Area Realty Officer said in his memorandum of February 28, 1972:

Without a legal opinion or decision by your office, we don't know which probate inventories require modifications to fill in gaps in the title chains and establish the current ownership of these allotments. The question is, should not the apparent confusion of Odelia and

Matilda and their relationship to Rae and Kate be corrected? Or is the decision in probate file 15150-13 irrevocable and final, requiring modifications of subsequent probate inventories that will perpetuate this error?

The Area Director in his petition for reopening filed with the Board on March 24, 1972, included the following statement:

The apparent error was flagged at some time in the past on the agency A and E card. The recent records audit, directed by the Superintendent, resulted in referral of the question to Mr. Hammett [the Examiner].

Whether the interests are large or small, we cannot in good conscience request or prepare modifications of inventories that ignore and perpetuate an apparent error where the Government as trustee has the power to correct its error.

Therefore, we are asking that you consider this memorandum as a petition for reopening of the estates of Rae and Kate Bitner to correct the error that was first acknowledged in 1915. (See enclosed partial copy of the probate file of Abner Bitner, 281-C150, 88933-15, who was the father of both Matilda and Odelia.)

By 43 CFR 4.242(a) the Examiner is barred from reopening probate which has been closed more than three years, but by 25 CFR 1.2 the Secretary has reserved discretionary authority to himself to reopen such cases. This discretionary authority has been delegated to this Board. 43 CFR 4.242(h).

A finding is made that on the basis of the record, the interests which were improperly given to Matilda Bitner and withheld from Odelia

Bitner are insubstantial and no manifest injustice arises from the error alleged. As in Blackburn, supra, a further finding is made that titles to lands must be settled and stabilized, and that the Secretary should not exercise his discretion in the circumstances of this case to reopen a probate closed for more than 58 years. The exercise of the Secretary's discretion in not reopening is consistent with the public interest in that the issuance of this decision removes ownership uncertainties and stabilizes the title to the land. The principles announced by the Assistant Secretary of the Interior in his decision in Jean Holton Westfeldt, A-29604 (November 15, 1963), are as applicable here as they were in Blackburn, supra. The Assistant Secretary said in that decision:

The determination as to whether to sell or lease public land pursuant to the Small Tract Act [the Act of June 1, 1938, as amended, 43 U.S.C. 632a 1970 ed.] is by statute committed to the discretion of the Secretary. If he, or his delegate, decides that it is not in the public interest to dispose of land under the act he may refuse to do so. Joseph M. Schuck et al., A-28603 (August 16, 1961).

A further finding is made that the refusal to exercise discretion to reopen this probate shall not be taken as a determination of the ultimate relationships of the ancestors or the heirs of either Matilda Bitner or Odelia Bitner in any other estate proceeding. The rights determined by the probate order of October 21, 1913, left undisturbed in this decision, are limited to those interests in the estate distributed by that order. Each probate is a separate pro-

ceeding and the finding in each must be supported by a preponderance of the evidence.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 211 DM 13.7, 35 F.R. 1208, 43 CFR 4.242(h), the petition for reopening is hereby DENIED.

This decision is final for the Department.

//original signed
David J. McKee, Chairman

I concur:

//original signed
James M. Day, Member